IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

**O R D E R**

S.B. CRIMINAL REVISION PETITION NO. 185/2004

*RANJEETA Vs. STATE OF RAJASTHAN & ORS.*

DATE: 13.03.2007.

**HON'BLE MR. K.S. RATHORE, J.**

Mr. D.K. Garg for the complainant-petitioner.
Mr. B.S. Chhaba, PP for the State.
Mr. Anil Jain for the accused-respondents.

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The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the order dated 20.01.2004 passed by the Additional Sessions Judge (Fast Track) No.1, Dholpur in Sessions Case No. 6/2004 (11/2004), whereby he discharged the accused-respondents Nos. 2 to 4 from the offence punishable under Section 308 IPC.

Learned counsel for the petitioner has challenged this order to that extent and submits that the Court below has seriously erred in discharging the accused-respondents from the offence punishable under Section 308 IPC observing that there was no intention of the accused as stipulated under Section 308 IPC and thus, prima-facie charge under Section 308 IPC is not made out against the accused-respondents. The Court

below has also observed that though the injury was inflicted on the vital part of the body but the same was not grievous in nature and was simple, therefore, no case under Section 308 IPC is made out against the accused-respondents.

Learned counsel for the petitioners in support of his submissions which are per se contrary to the facts and circumstances of the case, placed reliance on the judgment rendered by this Court in the case of **Babu Ram Vs. State of Rajasthan & Others, reported in 2004 (1) RCC 284** and the judgment rendered by this Court in **S.B. Criminal Revision Petition No. 516/99- Dinesh Chand Sharma vs. State of Rajasthan & Others, decided on 25.02.2000,** wherein this Court has considered the judgment rendered by the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Balram Bama Patil & Others, AIR 1983 SC 305,** wherein the Hon'ble Supreme Court has held as under:-

> "It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate

> act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
>
> The High Court was not correct in acquitting the accused of the charge under Section 307 merely because the injuries inflicted on the victims were in the nature of a simple hurt.”

After referring the aforesaid judgment, the learned counsel for the petitioner further submits that it is not the stage where meticulously evidence is to be appreciated but at this stage it is only to be seen whether prima-facie case under Section 308 IPC is made out or not?

Per contra, learned counsel appearing for the accused-respondents submits that upon bare perusal of the FIR, the FIR itself does not disclose with regard to intention to cause hurt and no case under SEction 308 IPC is made out against the accused-respondents and further in cross case and spur of moment in comparison to the petitioner, the accused-respondents also received sharp injuries and no case was registered against the petitioner in cross case under Section 308 IPC though the intention of the petitioner is fully proved.

Having heard learned counsel for the complainant-petitioner, learned Public Prosecutor for

the State as well as learned counsel for the accused-respondents and upon careful perusal of the judgments referred before me and after having gone through the impugned order dated 20.01.2004 and the relevant record, I find error apparent on the face of the record as simple findings that there was no intention of the accused-respondents to cause injury on the vital part of the body as received by the petitioner and, therefore, in the absence of the intention case under Section 308 IPC is not made out against the accused-respondents. Without appreciating the fact that the injury was inflicted on the vital part, the Court below also not care to examine the cross case at the time of passing the final order and has not passed speaking order.

I do not want to express any opinion on the merits of the case, but in the interest of justice, I deem it proper to quash and set-aside the impugned order dated 20.01.2004 passed by the Additional Sessions Judge (Fast Track) No.1, Dholpur and remand the matter back to the Appellate Court for fresh adjudication after considering the cross case and shall pass fresh speaking order after giving opportunity of being heard to the parties.

With the aforesaid observations, the revision petition stands disposed of.

Record be sent back forthwith.

**(K.S. RATHORE),J.**

/KKC/